

DOCKET NO.: CP185B
APPLICATION NO.: 10/718,077
OFFICE ACTION DATED: AUGUST 9, 2007

REMARKS

After entry of the present amendments Claims 1-3 and 6-21 will be pending in the application. Claims 22-46 have been withdrawn from consideration. Claims 4 and 5 have been canceled.

THE REJECTIONS ACCORDING TO 35 U.S.C. §103:

Claims 1-21 were rejected under 35 U.S.C. §103(a) "as being unpatentable over Murakata et al. (WO 88/07045) in view of Matthews et al. (WO 00/48571)." Applicants traverse.

Murakata discloses the compound claimed in the compositions of the present application. However, nothing in Murakata would lead one of skill in the art to the compositions of the present claims that require at least 20% (w/w) of a polyoxyl stearate and at least one polyethylene glycol.

Matthews teaches spontaneously dispersible pharmaceutical compositions containing N-benzoyl-staurosporine; a hydrophilic component; and a surfactant. The compositions of Matthews are designed to produce "colloidal structures, e.g. colloids or analogous structures, e.g. droplets, particles, micelles, e.g. swollen micelles, microemulsions and/or aggregates, of e.g. up to 1000 nm, e.g. generally more than 5 nm, when diluted with an aqueous medium." (WO 00/48571, Page 2, Lines 20-23). Further, the Examiner states that N-benzoyl-staurosporine is "a closely related compound to the one presently claimed". (August 8, 2007 Office Action, Page 4). Additionally, the Examiner states that polyoxyethyl stearic acid esters and polyethylene glycol are present as surfactants and hydrophilic agents, respectively. (August 8, 2007 Office Action, Page 4).

The Examiner contends that one of skill in the art at the time of the invention would have been motivated to take the compounds disclosed in Murakata and "adjust the ratios of fatty acid esters and polyethylene oxide" in Matthews to arrive at the presently claimed compositions. (August 8, 2007 Office Action, Page 5). Applicants respectfully disagree.

Matthews describes pharmaceutical compositions that "may comprise 5 to 80% by weight" surfactant. (Matthews, Page 10, line 27). While the upper end of Matthews'

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surfactant range encompasses the “at least 20% (w/w) of a polyoxyl stearate” requirement of the present application, it would have been clear to one of skill in the art at the time of the invention that Matthews’ inclusion of such a broad surfactant range indicates that Matthews did not recognize the significance of the surfactant percentage to bioavailability. Further, as demonstrated in examples 1-5, Matthews indicates that different surfactants, such as, for example Cremophor RH 40, Solutol HS 15 and Labrafil M2125 CS may be substituted for each other without affecting the bioavailability of N-benzoyl-staurosporine. (Matthews, Page 18, line 1 to page 20). Therefore, Matthews teaches away from the specific pharmaceutical compositions of the present application for the following reasons.

Applicants surprisingly discovered that the pharmaceutical compositions of the present application required the specific surfactant, polyoxyl stearate, to be effective. The present application teaches that for the disclosed genus of compounds the best bioavailability is obtained from a composition having at least 20% (w/w) polyoxyl stearate, as a surfactant, and at least one polyethylene glycol, as a hydrophilic component. One of skill in the art at the time of the invention would not have predicted that a composition having at least 20% (w/w) polyoxyl stearate and at least one polyethylene glycol would increase the bioavailability of compound IIa-12 of the present application more than 300% in both rats and dogs. (Page 41, line 12 to Page 49, line 2 of the application as filed).

In view of the above amendment and remarks, applicants respectfully request the Examiner withdraw the rejections under 35 U.S.C. §103(a) as they are now believed to be moot.

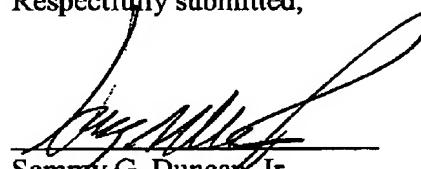
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CONCLUSION

In view of the above, it is believed that all the claims are in form for allowance, and an early notification to that end is respectfully requested. Please charge \$120.00 to Deposit Account No. 03-1195 pursuant to 37 C.F.R. §1.17(a)(1) for a one (1) month extension of time according to 37 C.F.R. §1.136(a)(1). No other fees are believed due for the filing of this response; however, should any additional fees be necessary please charge them to Deposit Account No. 03-1195. A copy of this page is enclosed

Respectfully submitted,


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Date: December 7, 2007

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